

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

JERRY GLENN JOSHUA, #319794,

Petitioner,

v.

ACTION NO. 2:06cv79

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violations of federal rights pertaining to petitioner's conviction on March 19, 2002, in the Virginia Beach Circuit Court of burglary, for which he was sentenced to eight and one-half years imprisonment, and his subsequent conviction of petit larceny third or subsequent offense on June 11, 2002, for which he was sentenced to an additional four years imprisonment.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on April 17, 2007, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written

objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the United States Magistrate Judge's Report and Recommendation and the time for filing same has expired.

The Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed May 8, 2007, and it is therefore ORDERED that the petition be DENIED and DISMISSED. Joshua's claims reflected in Grounds (n), (o) and (p) were never raised to the Virginia state courts and he did not show cause for failing to present the claims and prejudice resulting therefrom. Grounds (d), (e), (f), (h), (i), (k) and (l) were procedurally barred from review in the state courts and, thus, may not now be considered in the federal Court. Finally, Grounds (a), (b), (c), (g), (j), and (m) were previously adjudicated by the Virginia Supreme Court on the merits and none of the statutory exceptions that would allow this Court to review them on the merits applies. It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right,"

therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/
Rebecca Beach Smith
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

June 12, 2007